

**STATE OF INDIANA
DEPARTMENT OF STATE REVENUE**

IN REGARDS TO THE MATTER OF:

**BRENDA L. KING
DOCKET NO. 29-20020197**

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DEPARTMENTAL ORDER**

An administrative hearing was held on Thursday, May 2, 2002 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, an Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

The Petitioner, Brenda L. King, appeared Pro Se. Attorney Steve Carpenter, appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-1, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Departmental Order.

REASON FOR HEARING

On March 27, 2002, the Petitioner was prohibited from associating with charity gaming activities in Indiana for a period of ten (10) years. The Petitioner protested in a timely manner. A hearing was conducted pursuant to IC § 4-32-8-1.

SUMMARY OF FACTS

- 1) The Indiana Department of Revenue Criminal Investigation Division initiated an investigation of the Boys and Girls Clubs of Indianapolis.
- 2) The Department's Criminal Investigation Division report regarding the Boys & Girls Clubs of Indianapolis found that the organization had violated the following statutes, IC 4-32-9-15; IC 4-32-9-25; IC 4-32-9-28; IC 4-32-9-29; IC 4-32-12-1; IC 4-32-12-2; 45 IAC 18-6-3.
- 3) On March 27, 2002, the Department prohibited Petitioner from associating with charity gaming activities in Indiana for a period of ten (10) years.

FINDINGS OF FACTS

- 1) The Indiana Department of Revenue Criminal Investigation Division initiated an investigation of the Boys & Girls Clubs of Indianapolis. (Department Exhibit A).

- 2) The Department's Criminal Investigation Division report regarding the Boys & Girls Clubs of Indianapolis found that the organization had violated the following statutes, IC 4-32-9-15; IC 4-32-9-25; IC 4-32-9-28; IC 4-32-9-29; IC 4-32-12-1; IC 4-32-12-2; 45 IAC 18-6-3. (Department Exhibit A).
- 3) On March 27, 2002, the Department determined that the following sections of the Indiana code were violated: IC 4-32-9-15; IC 4-32-9-25(a); IC 4-32-9-28; IC 4-32-9-29.
- 4) The Department then notified Petitioner by letter that she was prohibited from associating with charity gaming activities in the State of Indiana for a period of ten (10) years.
- 5) Petitioner was a member in good standing of the Boys & Girls Clubs of Indianapolis for at least thirty (30) days before she became a worker (Record at 25 and 26).
- 6) The Petitioner admitted under oath to receiving remuneration for her participation in charity gaming. (Record at 27).
- 7) Petitioner admitted under oath to receiving tips while participating in charity gaming activities as a worker. (Record at 27).
- 8) Petitioner admitted under oath that she failed to report income received on her individual income tax returns. (Record at 27).

STATEMENT OF LAW

- 1) Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).
- 2) The Department's administrative hearings are conducted pursuant to IC § 6-8.1-5-1 et seq. (See, Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993)).
- 3) Pursuant to 45 IAC 15-5-3(b)(7), "The hearing is not governed by any rules of evidence. The department is expressly excluded from the requirements of the Administrative Adjudication Act.(renamed the Administrative Order and Procedures Act)."
- 4) Even if the Department were bound by the Administrative Orders and Procedures Act (AOPA), the rules clearly state that hearsay evidence that is properly objected to and does not fall with an exception to the hearsay rule may not form the sole basis of a resulting order. The AOPA does not say that the evidence cannot be heard, presented, or considered.
- 5) IC 4-32-9-27 states, "An operator or a worker may not directly or indirectly participate, other than in a capacity as operator or worker, in an allowable event..."
- 6) IC 4-32-9-28 states, "An operator must be a member in good standing of the qualified organization that is conducting an allowable event for at least one (1) year at the time of the allowable event."
- 7) According to IC 4-32-9-29, "A worker must be a member in good standing of a qualified organization that is conducting an allowable event for at least thirty (30) days at the time of the allowable event."
- 8) IC 4-32-12-1(a) (4) provides in pertinent part, "The Department may suspend... an individual ...for any of the following: (1) Violation of a provision of this article or of a rule of the department...(4) Commission of fraud, deceit, or misrepresentation."

- 9) IC 4-32-12-3 states, In addition to the penalties described in section 2 of this chapter, the department may do all or any of the following:
- (1) Suspend or revoke the license.
 - (2) Lengthen a period of suspension of the license.
 - (3) Prohibit an operator or an individual who has been found to be in violation of this article from associating with charity gaming conducted by a qualified organization.
 - (4) Impose an additional civil penalty of not more than one hundred dollars (\$100) for each day the civil penalty goes unpaid.

CONCLUSIONS OF LAW

- 1) The Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made.
- 2) Petitioner was a member in good standing of the Boys & Girls Clubs of Indianapolis for at least thirty (30) days before she became a worker.
- 3) Petitioner admitted under oath to receiving tips while participating in charity gaming activities as a worker.

DEPARTMENTAL ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:

The Petitioner's protest is denied. However, Petitioner's admissions under oath, her remorsefulness, and cooperation during the hearing are all mitigating factors in determining the length of Petitioner's suspension. The Petitioner is hereby prohibited from participating and associating in charity gaming activities in the State of Indiana for a period of five (5) years.

- 1) Under IC 6-8.1-5-1, the organization may request a rehearing. However, rehearings are granted only under unusual circumstances. Such circumstances are typically the existence of facts not previously known that would have caused a different result if submitted prior to issuance of the Departmental Order.
- 2) A request for rehearing shall be made within seventy-two (72) hours from the issue date of the Departmental Order and should be sent to the Indiana Department of Revenue, Legal Division, Appeals Protest Review Board, P.O. Box 1104, Indianapolis, Indiana 46206-1104.
- 3) Upon receipt of the request for rehearing, the Department will review the respective file and the rehearing request to determine if sufficient new information has been presented to warrant a rehearing.
- 4) The Department will then notify the organization in writing whether or not a rehearing has been granted. In the event a rehearing is granted, the organization will be contacted to set a rehearing date.

- 5) If the request for rehearing is denied or a request is not made, all administrative remedies will have been exhausted. The organization may then appeal the decision of the Department to the Court of proper jurisdiction.

**THIS ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA
DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN
SEVENTY-TWO (72) HOURS FROM THE DATE THE ORDER IS ISSUED.**

Dated: _____

Bruce R. Kolb / Administrative Law Judge